

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **Arlo Bruce Brakel, M.D.**

4 Holder of License No. **32307**
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-07-0716A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

(Letter of Reprimand and Probation)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on
8 August 7, 2008. Arlo Bruce Brakel, M.D., ("Respondent") appeared before the Board with legal
9 counsel Christopher J. Smith for a formal interview pursuant to the authority vested in the Board
10 by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and
11 Order after due consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of allopathic medicine in the State of Arizona.

15 2. Respondent is the holder of License No. 32307 for the practice of allopathic
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-07-0716A after receiving a complaint that
18 Respondent had requested that a patient share his narcotics with Respondent. Respondent
19 denied the allegations of the complaint but admitted other acts of unprofessional conduct.

20 4. During the investigation by Board staff, Respondent admitted to using morphine,
21 Dilaudid, and Percocet without a physician's prescription. Respondent stated that he was using
22 the medications to relieve back pain due to a car accident in May 2007.

23 5. Respondent also admitted that he would obtain the medications by stealing them
24 from the prescription bottles of patients who had sought medical treatment from him.

25

6. In August 2007, the Board ordered Respondent to undergo biological fluid and hair sample analysis. Respondent tested positive for controlled substances.

7. In August 2007, Respondent entered a residential facility for a thirty day substance abuse treatment program. Respondent successfully completed the thirty day program, and was discharged with a diagnosis of prescription opiate dependence. On October 2, 2007, Respondent enrolled in the Monitored Aftercare Program (MAP).

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) (“[h]abitual intemperance in the use of alcohol or habitual substance abuse;”) and A.R.S. § 32-1401(27)(g) (“[u]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment;”).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Respondent is issued a Letter of Reprimand for habitual intemperance, diverting controlled substances and using controlled substances not prescribed to him by another physician.

2. Respondent shall promptly enroll in and participate in the Board's Monitored Aftercare Program ("MAP") for a period of 5 years. Respondent shall be given credit for the time he has participated in MAP pursuant to an Interim Consent Agreement. Respondent's participation in MAP is subject to the following terms:

1 a. Respondent shall submit quarterly declarations under penalty of perjury on forms
2 provided by the Board, stating whether there has been compliance with all conditions of MAP.
3 The declarations shall be submitted on or before the 15th of March, June, September and
4 December of each year, beginning on or before March 15, 2009.

5 b. **1. Relapse Prevention Group.** Respondent shall attend MAP's relapse
6 prevention group therapy sessions one time per week for the duration of this Order, unless
7 excused by the MAP relapse prevention group facilitator for good cause such as illness or
8 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to release to
9 Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly
10 reports to Board Staff regarding attendance and progress. The reports shall be submitted on or
11 before the 10th day of each month.

12 **2. 12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-
13 step meetings or other self-help group meetings appropriate for substance abuse and approved
14 by Board Staff, for a period of ninety days beginning not later than either (a) the first day
15 following Respondent's discharge from chemical dependency treatment or (b) the date of this
16 Order.

17 **3.** Following completion of the ninety meetings in ninety days, Respondent shall
18 participate in a 12-step recovery program or other self-help program appropriate for substance
19 abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall
20 attend a minimum of three 12-step or other self-help program meetings per week for a total of
21 twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must
22 maintain a log of all self-help meetings. Board Staff will provide the log to Respondent.

23 **4. Board-Staff Approved Primary Care Physician.** Respondent shall promptly
24 obtain a primary care physician and shall submit the name of the physician to Board Staff in
25 writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of

1 providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*,
2 Respondent shall obtain medical care and treatment only from the PCP and from health care
3 providers to whom the PCP refers Respondent. Respondent shall request that the PCP
4 document all referrals in the medical record. Respondent shall promptly inform the PCP of
5 Respondent's rehabilitation efforts and provide a copy of this Order the PCP. Respondent shall
6 also inform all other health care providers who provide medical care or treatment that
7 Respondent is participating in MAP.

8 a. "*Emergency*" means a serious accident or sudden illness that, if not
9 treated immediately, may result in a long-term medical problem or loss of life.

10 **5. Medication.** Except in an *Emergency*, Respondent shall take no *Medication*
11 unless the PCP or other health care provider to whom the PCP refers Respondent prescribes
12 the *Medication*. Respondent shall not self-prescribe any *Medication*.

13 a. "*Medication*" means a prescription-only drug, controlled substance,
14 and over-the counter preparation, other than plain aspirin, plain ibuprofen, and
15 plain acetaminophen.

16 **6.** If a controlled substance is prescribed, dispensed, or is administered to
17 Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48
18 hours and notify the MAP Director immediately. The notification shall contain all information
19 required for the medication log entry specified in paragraph 7. Respondent shall request that the
20 notification be made a part of the medical record. This paragraph does not authorize
21 Respondent to take any *Medication* other than in accordance with paragraph 5.

22 **7. Medication Log.** Respondent shall maintain a current legible log of all
23 *Medication* taken by or administered to Respondent, and shall make the log available to the
24 Board Staff upon request. For *Medication* (other than controlled substances) taken on an on-
25 going basis, Respondent may comply with this paragraph by logging the first and last

1 administration of the *Medication* and all changes in dosage or frequency. The log, at a minimum,
2 shall include the following:

- 3 a. Name and dosage of *Medication* taken or administered;
- 4 b. Date taken or administered;
- 5 c. Name of prescribing or administering physician;
- 6 d. Reason *Medication* was prescribed or administered.

7 This paragraph does not authorize Respondent to take any *Medication* other than in accordance
8 with paragraph 5.

9 **8. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or any
10 food or other substance containing poppy seeds or alcohol.

11 **9. Biological Fluid Collection.** During all times that Respondent is physically
12 present in the State of Arizona and such other times as Board Staff may direct, Respondent
13 shall promptly comply with requests from Board Staff or MAP Director to submit to witnessed
14 biological fluid collection. If Respondent is directed to contact an automated telephone message
15 system to determine when to provide a specimen, Respondent shall do so within the hours
16 specified by Board Staff. For the purposes of this paragraph, in the case of an in-person
17 request, "promptly comply" means "immediately." In the case of a telephonic request, "promptly
18 comply" means that, except for good cause shown, Respondent shall appear and submit to
19 specimen collection not later than two hours after telephonic notice to appear is given. The
20 Board in its sole discretion shall determine good cause.

21 **10.** Respondent shall provide Board Staff in writing with one telephone number
22 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
23 submit to biological fluid collection. For the purposes of this section, telephonic notice shall be
24 deemed given at the time a message to appear is left at the contact telephone number provided
25 by Respondent. Respondent authorizes any person or organization conducting tests on the

1 collected samples to provide testing results to the Board and the MAP Director.

2 **11.** Respondent shall cooperate with collection site personnel regarding
3 biological fluid collection. Repeated complaints from collection site personnel regarding
4 Respondent's lack of cooperation regarding collection may be grounds for termination from
5 MAP.

6 **12. Out of State Travel and/or Unavailability at Home or Office Telephone**
7 **Number.** Respondent shall provide Board Staff at least three business days advance
8 written notice of any plans to be away from office or home when such absence would prohibit
9 Respondent from responding to an order to provide a biological fluid specimen or from
10 responding to communications from the Board. The notice shall state the reason for the
11 intended absence from home or office, and shall provide a telephone number that may be used
12 to contact Respondent.

13 **13. Payment for Services.** Respondent shall pay for all costs, including
14 personnel and contractor costs, associated with participating in MAP at time service is
15 rendered, or within 30 days of each invoice sent to Respondent.

16 **14. Examination.** Respondent shall submit to mental, physical, and medical
17 competency examinations at such times and under such conditions as directed by the Board to
18 assist the Board in monitoring Respondent's ability to safely perform as a physician and
19 Respondent's compliance with the terms of this Order.

20 **15. Treatment.** Respondent shall submit to all medical, substance abuse, and
21 mental health care and treatment ordered by the Board.

22 **16. Obey All Laws.** Respondent shall obey all federal, state and local laws, and
23 all rules governing the practice of medicine in the State of Arizona.

24 **17. Interviews.** Respondent shall appear in person before the Board and its
25 Staff and MAP committees for interviews upon request, upon reasonable notice.

1 **18. Address and Phone Changes, Notice.** Respondent shall immediately
2 notify the Board in writing of any change in office or home addresses and telephone numbers.

3 **19. Relapse, Violation.** In the event of chemical dependency relapse by
4 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent shall
5 promptly enter into an Interim Consent Agreement for Practice Restriction that requires, among
6 other things, that Respondent not practice medicine until such time as Respondent successfully
7 completes a long-term inpatient or residential treatment program for chemical dependency
8 designated by Board Staff and obtains affirmative approval from the Board or the Executive
9 Director to return to the practice of medicine. Prior to approving Respondent's request to return
10 to the practice of medicine, Respondent may be required to submit to witnessed biological fluid
11 collection, undergo any combination of physical examination, psychiatric or psychological
12 evaluation and/or successfully pass the special purpose licensing examination or the Board may
13 conduct interviews for the purpose of assisting it in determining the ability of Respondent to
14 safely return to the practice of medicine. **In no respect shall the terms of this paragraph**
15 **restrict the Board's authority to initiate and take disciplinary action for violation of this**
16 **Order.**

17 **20. Notice Requirements.**

18 **(A)** Respondent shall immediately provide a copy of this Order to all employers
19 and all hospitals and free standing surgery centers where Respondent currently has privileges.
20 Within 30 days of the date of this Order, Respondent shall provide the Board with a signed
21 statement of compliance with this notification requirement. Upon any change in employer or
22 upon the granting of privileges at additional hospitals and free standing surgery centers,
23 Respondent shall provide the employer, hospital or free standing surgery center with a copy of
24 this Order. Within 30 days of a change in employer or upon the granting of privileges at
25 additional hospitals and free standing surgery centers, Respondent shall provide the Board with

1 a signed statement of compliance with this notification requirement.

2 (B) Respondent is further required to notify, in writing, all employers, hospitals
3 and free standing surgery centers where Respondent currently has or in the future gains
4 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in violation
5 of this Order and/or entry into a treatment program. Within seven days of any of these events
6 Respondent shall provide the Board written confirmation of compliance with this notification
7 requirement.

8 **21. Public Record.** This Order is a public record.

9 **22. Out-of-State.** In the event Respondent resides or practices as a physician in
10 a state other than Arizona, Respondent shall participate in the rehabilitation program sponsored
11 by that state's medical licensing authority or medical society. Respondent shall cause the
12 monitoring state's program to provide written reports to the Board regarding Respondent's
13 attendance, participation, and monitoring. The reports shall be due quarterly on or before the
14 15th day of March, June, September, and December of each year, until the Board terminates
15 this requirement in writing. The monitoring state's program and Respondent shall immediately
16 notify the Board if Respondent: a) is non-compliant with any aspect of the monitoring
17 requirements; b) relapses; c) tests positive for controlled substances; d) has low specific gravity
18 urine drug test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and
19 e) is required to undergo any additional treatment.

20 **23.** The Board retains jurisdiction and may initiate new action based upon any
21 violation of this Order.

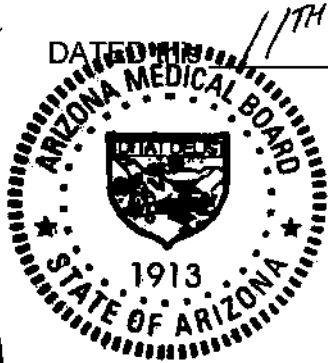
22 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

23 Respondent is hereby notified that he has the right to petition for a rehearing or review.
24 The petition for rehearing or review must be filed with the Board's Executive Director within thirty
25 (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review

1 must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103.
2 Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a
3 petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35)
4 days after it is mailed to Respondent.

5 Respondent is further notified that the filing of a motion for rehearing or review is required
6 to preserve any rights of appeal to the Superior Court.

7 DATED 11TH day of December, 2008.



8 THE ARIZONA MEDICAL BOARD

9
10 By [Signature]
11 LISA S. WYNN
12 Executive Director

13 ORIGINAL of the foregoing filed this
14 11TH day of December, 2008 with:

15 Arizona Medical Board
16 9545 East Doubletree Ranch Road
17 Scottsdale, Arizona 85258

18 Executed copy of the foregoing
19 mailed by U.S. Mail this
20 11TH day of December, 2008, to:

21 Christopher J. Smith
22 SMITH LAW GROUP
23 262 North Main Avenue
24 Tucson, AZ 85701-001

25 Arlo B. Brakel, M.D.
Address of Record

[Signature]

#236920